

at
contd.

with the proviso that said cosmetic delivery system comprises at least one tri-block copolymer film former.

REMARKS

I. Status of Application

Claims 1- 28 are pending in this application. Claim 3 has been deleted. The table in Example 1, page 17 has been amended to correct an error in calculation. These amendments do not constitute new matter. According to M.P.E.P. §2163.07, an amendment to correct an obvious error does not constitute new matter where one skilled in the art would not only recognize the existence of the errors in the specification, but would also recognize the appropriate correction. In re Oda, 443 F.2d 1200, 170 U.S.P.Q. 260 (CCPA 1971). Support for this amendment can be found in the application as originally filed, such as, for example at page 9, last paragraph and page 7, last paragraph.

Claims 1, 2, 5, 13, 25, and 27 have been amended. Support for the amendments can be found in the specification as filed. In particular, the amendment to claims 1 and 27, which makes it clear that the inventive compositions comprise at least one tri-block copolymer film former, is supported at, e.g., Examples 1 - 3 on pages 17-20. Finally, claims 2, 5, 13, and 25 amended to further clarify the scope of the claimed invention in light of the Examiner's suggestions. The amendments to claims 2, 5, 13 and 25 do not narrow the scope of the claim in any way. The amendment to claim 2, merely adds the definition of n, which was already present implicitly, while the amendments to claims 5, 13, and 25 correct simple typographical errors.

II. Claim Objections

Claims 25 has been objected to because of the informalities set forth on page 2 of the present Office Action. This claim has now been amended as per the Examiner's suggestions, thus rendering this objection moot. Specifically, a period was added at the end of the claim. Accordingly, Applicants respectfully request withdrawal of these objections.

III. Rejections under 35 U.S.C. §112

Claims 2, 3, 5, 13, and 25 have been rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly claim the subject matter which the applicants regard as the invention. See page 2 of the present Office Action.

Claim 2 has been amended to recite that n ranges from 0 to 7, thus rendering this rejection moot. Accordingly, Claim 3 has been deleted. Claim 5 has been amended to depend on claim 4, thus rendering this rejection moot. Claim 13 has been amended to correct an inadvertent typographical error and to delete the redundancy. Claim 25 has been amended to depend on claim 24, thus rendering this rejection moot.

Applicants thank the Examiner for pointing out these inadvertent typographical errors, and request that these rejections be withdrawn.

IV. Rejections under 35 U.S.C. §102

A rejection under § 102 is only proper when the claimed subject matter, in this case a composition, is identically described or disclosed in the prior art. *In re Arkley*, 455 F.2d 586, 587 (CCPA 1972); see also M.P.E.P. § 706.02(a) ("For anticipation under

35 U.S.C. 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly.").

Reusch

Claims 1, 2, 6, 7, 8, 9, 10 and 26 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,928,632 ("*Reusch*") for the reasons set forth on page 3 of the present Office Action. Applicants respectfully traverse this rejection.

However, in a effort to expedite prosecution, Claim 1 has been amended to recite that the composition must comprise at least one tri-block copolymer film former. The composition in *Reusch*, specifically GEAHLENE, does not comprise at least one tri-block copolymer film former. Accordingly, Applicants respectfully request that this rejection be withdrawn.

Knitowski

Claims 1, 2, 6, 9, 10, 12, 13, 15, 22, 23 and 27 have been rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,248,339 ("*Knitowski*") for the reasons set forth on pages 3-4 of the present Office Action. Applicants respectfully traverse this rejection.

However, in a effort to expedite prosecution, Claims 1 and 27 have been amended to recite that the composition must comprise at least one tri-block copolymer film former. The composition in *Knitowski*, specifically in Table 1, does not comprise at least one tri-block copolymer film former. Accordingly, Applicants respectfully request that this rejection be withdrawn.

Curtis

Claims 1, 4, 5, 6, 9, 10, 12, 13, 15, 22, 24, 25 and 27 have been rejected under 35 U.S.C. 102(b) as being anticipated by WO 98/42298 ("*Curtis*") for the reasons set forth on page 4 of the present Office Action. Applicants respectfully traverse this rejection.

However, in a effort to expedite prosecution, Claims 1 and 27 have been amended to recite that the composition must comprise at least one tri-block copolymer film former. The composition in *Curtis*, specifically in Example 4, does not comprise at least one tri-block copolymer film former. Accordingly, Applicants respectfully request that this rejection be withdrawn.

Konik

Claims 1, 6, 9, 10, 12, 13, 14, 15, 17, 18, 21, 22, 23, 27 and 28 have been rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,060,072 ("*Konik*") for the reasons set forth on page 4 of the present Office Action. Applicants respectfully traverse this rejection.

Konik discloses compositions comprising di-block copolymers. See col. 2, line 58-62. Accordingly, *Konik* does not teach the compositions or methods of the present invention. Accordingly, Applicants respectfully request that this rejection be withdrawn.

Anton

Claims 1, 3, 11 and 19 have been rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,066,313 ("*Anton*") for the reasons set forth on pages 4-5 of the present Office Action. Applicants respectfully traverse this rejection.

In order to identically describe or disclose the claimed composition, the reference must direct those skilled in the art to the composition without any need for picking, choosing, and combining various disclosures in the reference not directly related to each other by the teachings of the cited reference. *Arkley*, at 587. In *Arkley*, the Court stated that "there is nothing in the teachings relied upon by the patent Office which 'clearly and unequivocally' directs those skilled in the art to make this selection nor any indication that Flynn [the inventor of the prior art patent] made this selection himself." *Arkley*, at 588.

Anton discloses compositions comprising the polymer disclosed at col. 2, lines 41-col. 4, line 33. However, *Anton* does not "clearly and unequivocally" disclose the at least one block copolymer film former of the present invention. Accordingly, Applicants respectfully request that this rejection be withdrawn.

V. Rejections under 35 U.S.C. §103

To establish a *prima facie* case of obviousness, an Examiner must, in addition to other requirements, must demonstrate that , the prior art reference teaches or suggests all the claim limitations. See M.P.E.P. § 2143.

Curtis in view of Anton, Konik, and Kimura

Claims 1-6 and 9-28 have been rejected under 35 U.S.C. §103(a) as being unpatentable over *Curtis in view of Anton, Konik, and Kimura* for the reasons set forth on pages 5 - 6 of the present Office Action. Applicants respectfully traverse this rejection.

In the present case, the Examiner has failed to make a *prima facie* case of obviousness at least because the documents cited by the Examiner do not teach or suggest all the claim limitations. Specifically, even if, *arguendo*, *Curtis* was modified by *Anton, Konik* and *Kimura* in the manner suggested by the Examiner, Applicants assert that the resultant modification would not render the present claims obvious because that combination would not teach or suggest all of the limitations of the present claims as amended. As discussed with respect to the rejections under 35 U.S.C. § 102 above, not one of *Curtis, Anton*, and *Konik* discloses a tri-block copolymer film former according to the present invention. The disclosure of *Kimura*, relied on the Examiner for the disclosure of the preparation of polymethylsilsesqioxanes, does nothing to cure this deficiency. Therefore, for at least this reason, Applicants submit that the Examiner has failed to make a *prima facie* case of obviousness.

Reusch

Claims 1, 7 and 8 have been rejected under 35 U.S.C. §103(a) as being unpatentable over *Reusch* for the reasons set forth on page 7 of the present Office Action. Applicants respectfully traverse this rejection.

Here again, the Examiner has failed to make a *prima facie* case of obviousness at least because *Reusch* does not teach or suggest all the claim limitations. As discussed with respect to the rejections under 35 U.S.C. § 102 above, *Reusch* does not disclose a tri-block copolymer film former according to the present invention. Thus, the proposed modification would not meet all the present claim limitations. Accordingly, for at least this reason, Applicants submit that the Examiner has failed to make a *prima facie* case of obviousness and respectfully request withdrawal of this rejection.

VI. Supplemental Information Disclosure Statement

Applicants bring to the attention of the Examiner the Supplemental Information Disclosure Statement filed herewith. The documents listed on the PTO 1449 were cited in co-pending Application No. 09/258,809 (Attorney Docket No.: 05725.0347-00000).

CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of the pending claims and the timely allowance of all pending claims.

Please grant any extensions of time required to enter this paper and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Malia V. De T., Reg No. 39,064
By: *for Anthony C. Tridico*
Anthony C. Tridico
Reg. No. 45,958

Dated: September 28, 2001



Attorney Docket No. 03725.0642
Application No. 09/747,204

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Appendix

IN THE SPECIFICATION:

In example 1, on page 17, please amend Table 1 as follows:

| Phase | NAME | QTY |
|-------|---|------------|
| A | Jojoba Esters | 8 |
| | Polyethylene | 2 |
| B | Dimethicone (Dow Corning 200/1.5 cst Fluid) | 25 |
| C | Titanium Dioxide | 9.2 |
| | PTFE | 3.5 |
| | Titanium Dioxide | 3.0 |
| | Mica | 1.9 |
| | Lauroyl Lysine | 0.1 |
| | Aluminum Starch Octenylsuccinate | 2.0 |
| | Isopropyl Titanium Triisostearate | 0.2 |
| | Iron Oxides | 2.5 |
| | Methylparaben | 0.1 |
| D | Cyclomethicone | 9.6 |
| | Dimethicone (Dow Corning 200/1.5 cst Fluid) | 19.5 |
| | Trimethylsiloxysilicate | 8.4 |
| | Dimethiconol | 0.5 |
| | [Isododecane | 1.7] |
| | Versagel M5960 | 2.0 [0.24] |
| | Preservatives | 0.3 |
| | Lauryl PCA | 0.1 |
| E | Acrylates Copolymer | 0.9 |
| | Isobutane | 0.1 |

IN THE CLAIMS:

Please amend claims 1, 2, 5, 13, 25, 27 and 28 as follows:

1. (Amended) A composition comprising:

at least one linear dimethicone; and

LAW OFFICES

FINNEGAN, HENDERSON,
FARABOW, GARRETT,
& DUNNER, L.L.P.
1300 I STREET, N. W.
WASHINGTON, DC 20005
202-408-4000

at least one block copolymer film former chosen from tri-block copolymer film formers, multi-block copolymer film formers and radial block copolymer film formers, with the proviso that said composition comprises at least one tri-block copolymer film former.

2. (Amended) The composition according to claim 1, wherein said at least one linear dimethicone is chosen from linear polydimethylsiloxanes of the formula



wherein n ranges from 0 to 7.

5. (Amended) The composition according to claim 4 [1], wherein said dimethicone copolyols are chosen from dimethicone copolyol acetate, dimethicone copolyol adipate, dimethicone copolyol almondate, dimethicone copolyolamine, dimethicone copolyol butyl ether, dimethicone copolyol laurate, and dimethicone copolyol stearate.

13. (Amended) The composition according to claim 12, wherein said at least one powder is chosen from [form] talc, pigments, fillers, [pearling agents], solid polymers, nylons, silicas, silks, vegetable flours, starches, and pearling agents.

25. (Amended) The composition according to claim 24 [1], wherein said at least one additional film former is present in said composition in an amount ranging from 0 % to 20% by weight.

27. A cosmetic delivery system comprising
at least one linear dimethicone;

at least one block copolymer film former chosen from tri-block copolymer film formers, multi-block copolymer film formers and radial block copolymer film formers;
and

at least one cosmetic powder,

with the proviso that said cosmetic delivery system comprises at least one tri-block copolymer film former.